

Rule 1.2. Scope of ~~R~~representation and Allocation of Authority Between Client and Lawyer.

(a) ~~A-Subject to paragraphs (c) and (d), a~~ lawyer shall abide by a client's decisions concerning the objectives of representation, ~~subject to paragraphs (b), (c), (d), and and,~~ as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to ~~accept an offer of settlement of settle~~ a matter. In a criminal case, ~~a the~~ lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the ~~objectives-scope~~ of the representation if the ~~client consents after consultation~~ limitation is reasonable under the circumstances and the client gives informed consent.

~~(e)(d)~~ A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

~~(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.~~

Comment

Scope of Representation

Allocation of Authority between Client and Lawyer

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. ~~Within those limits,~~

~~a client also has a right to consult with the lawyer. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.~~

[2] On occasion, however, a lawyer and a client may disagree about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues but should to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

Services Limited in Objectives or Means

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material

change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] ~~The objectives or scope of services~~ The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. ~~For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles.~~ When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. TheA limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific ~~objectives or means~~ means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude ~~objectives or means~~ actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted were not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when

determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client ~~An agreement concerning the scope of representation~~ must accord with the Rules of Professional Conduct and other law. ~~Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue. See, e.g., Rules 1.1, 1.8 and 5.6.~~

Criminal, Fraudulent and Prohibited Transactions

~~A lawyer is required to give~~ [9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. ~~The~~ Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent ~~does not~~, of itself, make a lawyer a party to the course of action. ~~However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.~~ There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The ~~lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the~~ lawyer is required to avoid ~~furthering the purpose, for example, by suggesting how it~~ assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally ~~supposes is supposed~~ was legally proper but then discovers is criminal or fraudulent. ~~Withdrawal~~ The lawyer must, therefore, withdraw from the representation, ~~therefore, may be required~~ of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

123 [11] Where the client is a fiduciary, the lawyer may be charged with special
124 obligations in dealings with ~~the~~a beneficiary.

125 [12] Paragraph ~~(e)~~(d) applies whether or not the defrauded party is a party to the
126 transaction. Hence, a lawyer ~~should~~must not participate in ~~a sham transaction, for~~
127 ~~example,~~ a transaction to effectuate criminal or fraudulent ~~escape~~avoidance of tax
128 liability. Paragraph ~~(e)~~(d) does not preclude undertaking a criminal defense incident to a
129 general retainer for legal ~~service~~services to a lawful enterprise. The last clause of
130 paragraph ~~(e)~~(d) recognizes that determining the validity or interpretation of a statute or
131 regulation may require a course of action involving disobedience of the statute or
132 regulation or of the interpretation placed upon it by governmental authorities.

133 [13] If a lawyer comes to know or reasonably should know that a client expects
134 assistance not permitted by the Rules of Professional Conduct or other law or if the
135 lawyer intends to act contrary to the client's instructions, the lawyer must consult with
136 the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

137 [14] Lawyers are encouraged to advise their clients that their representations are
138 guided by the Utah Standards of Professionalism and Civility and to provide a copy to
139 their clients.

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